ERCB Energy Resources Conservation Board
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Directive 068

Revised edition September 17, 2010
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ERCB Security Deposits

The Energy Resources Conservation Board (ERCB) has approved this directive on September 17, 2010.

Dan McFadyen
Chairman

Contents

1 Purpose of the Directive 1
2 What's New in this Edition 2
3 General Provisions 2
4 Negotiable Instruments 2
5 Letters of Credit 3
5.1 Nonrenewal of LOCs 3
5.2 Cancellation of LOCs 3
5.3 Amending LOCs 3
6 Use of Security Deposits 4
7 Refund of Security Deposits 4
8 ERCB Resources 5
Appendix 1 Draft Form of Standby Letter of Credit 6
Appendix 2 Demand Draft 8

This edition of *Directive 068: ERCB Security Deposits* updates and replaces the May 2008 edition and is effective October 18, 2010.

1 Purpose of the Directive

Directive 068 provides information and direction regarding the cash and letters of credit (LOCs) provided to the ERCB to satisfy security deposit requirements, including their form, use, and refund.

For the purpose of this directive:

- "cash" means both Canadian currency and a negotiable financial instrument payable in Canadian currency and includes a cheque, money order, or bank draft;
- "eligible financial institution" means
  - all federally regulated Schedule I and II banks, as set out in the *Bank Act* (Canada),
  - the Alberta Treasury Branch, and
  - Alberta-based credit unions; and
- "licensee" means the responsible duty holder (e.g., licensee, approval holder), as specified in legislation.

2 What's New in this Edition

The primary change to the September 2010 edition of *Directive 068* is the updating of Appendix 1: Draft Form of Standby Letter of Credit with the new ERCB Calgary head office address, effective October 18, 2010.

3 General Provisions

The ERCB is entitled to collect security deposits in accordance with Parts 1.1 and 16.6 of the *Oil and Gas Conservation Regulations*.

The requirements in this directive apply to any security deposit required by the ERCB.

The ERCB will accept only cash and LOCs meeting the requirements of this directive to satisfy its liability management program security deposit requirements.

The ERCB will only accept a security deposit from the licensee required to submit the security deposit or from a trustee, receiver, or receiver manager acting on behalf of that licensee. The ERCB is unable to accept a security deposit provided by one licensee to satisfy the security deposit requirements of another licensee, due to the potential problems that could arise from the ERCB's use, forfeiture, or refund of the security deposit.

An LOC or financial instrument provided to the ERCB to satisfy a security deposit requirement must designate the ERCB as the beneficiary.

A licensee may change the form of its security deposit from a cash deposit to a LOC or vice versa, provided that the requirements of this directive are met in full. An existing security deposit will only be returned to a licensee once the replacement security deposit has been received and processed by the ERCB.

4 Negotiable Instruments

The ERCB will only accept

- a cheque drawn on the account of the licensee required to provide the security deposit,
- a cheque drawn on a legal trust account in the name of the licensee required to provide the security deposit,
- a money order identifying the licensee required to provide the security deposit as the payer or remitter, or a

- bank draft identifying the licensee required to provide the security deposit as the payer or remitter

made payable to the Energy Resources Conservation Board or ERCB.

The ERCB establishes a separate interest-earning trust account with a Canadian chartered bank for each licensee providing a cash deposit with the ERCB. The bank is responsible for issuing monthly account statements and annual T-5 statements to a licensee having a cash deposit. As these accounts are trust accounts, changes to a security provider's address or other administrative changes must be submitted through the ERCB's Finance Branch.

5 Letters of Credit

The ERCB will accept only renewable, irrevocable LOCs in the form prescribed by this directive issued by an eligible financial institution in the exact legal name of the licensee required to provide the security deposit.

A blank LOC form and a blank sample of the demand draft are in Appendices 1 and 2; they can also be downloaded with this directive from the ERCB Web site www.ercb.ca under Industry Zone : Rules, Regulations, Requirements : Directives.

5.1 Nonrenewal of LOCs

The ERCB requires the LOC agreement to stipulate that the issuing financial institution must automatically renew the LOC without amendment. Should the issuing financial institution elect not to extend the LOC, the ERCB requires the LOC agreement to stipulate that the issuing financial institution must notify the ERCB of the nonrenewal of the LOC by registered mail addressed to the ERCB's Chief Financial Officer 60 days prior to the expiry date.

5.2 Cancellation of LOCs

If a financial institution wishes to cancel a LOC prior to its renewal date, it must notify the ERCB's Chief Financial Officer of its intention by registered mail 60 days prior to the proposed cancellation date.

5.3 Amending LOCs

A licensee may amend an existing LOC held by the ERCB to meet incremental security deposit requirements. An amendment to an existing LOC must be received by the ERCB by the date stipulated in the letter advising the licensee of the increased security deposit requirement.

A licensee may also amend an existing LOC to reflect a lower security deposit requirement. However, it may elect to maintain a LOC in excess of its current security deposit requirements.

Within 30 days of any change that would affect an existing LOC, a licensee must provide the ERCB with an appropriate amendment to that LOC. This would apply, for example, to changes resulting from a corporate name change or an amalgamation.

6 Use of Security Deposits

A security deposit is intended to offset potential suspension, abandonment, remediation, and reclamation costs. While the liability assessment of wells and facilities is calculated on the basis of abandonment and reclamation components, the use of a security deposit is not restricted by those definitions. The intended uses of security deposits are set out in Section 1.100(2) of the *Oil and Gas Conservation Regulations*.

The ERCB may use all or part of a security deposit placed by a licensee to properly suspend a well, facility, or pipeline, to abandon a well or facility, or to discontinue a pipeline if the licensee fails to comply with an ERCB order to undertake any of these activities, and it may distribute these funds to the Alberta Oil and Gas Orphan Abandonment and Reclamation Association (Orphan Well Association) or any licensee to undertake these activities on its behalf. The ERCB may also use all or part of a security deposit placed by a licensee to undertake remediation and reclamation activities on ERCB-approved activities on lands classified as "unspecified" by the Alberta *Environmental Protection and Enhancement Act* if the licensee fails to comply with an ERCB order to undertake any of these activities.

Alberta Environment may use all or part of the security deposit placed with the ERCB by a licensee to undertake remediation or reclamation activities for wells, facilities, and pipelines located on "specified lands" as defined in the *Environmental Protection and Enhancement Act* and its *Conservation and Reclamation Regulation* if the licensee fails to comply with a direction from Alberta Environment to undertake these activities.

Alberta Sustainable Resource Development may also use all or part of the security deposit placed with the ERCB by a licensee to undertake remediation or reclamation activities for wells, facilities, and pipelines located on lands under its jurisdiction.

If the amount of security held by the ERCB to meet a security deposit obligation is reduced by costs incurred on behalf of the licensee by the ERCB, Orphan Well Association, Alberta Environment, or Sustainable Resource Development, the licensee must replace any security deposit required to offset a difference between its deemed liabilities and deemed assets by the date specified by the ERCB.

If the financial security used by the ERCB, Orphan Well Association, Alberta Environment, or Sustainable Resource Development proves to be inadequate to address the costs of an orphaned site, the difference between the security deposit held and the cost incurred to address the orphaned site constitutes a debt payable to the ERCB or to the ERCB to the account of the Orphan Fund.

If a security deposit lodged with the ERCB to satisfy a liability management program requirement exceeds the amount of the requirement and the amount of security required by a liability management program increases, the ERCB may allocate any portion of the excess security deposit to satisfy the increased security deposit requirement without the consent of the licensee providing the security deposit.

7 Refund of Security Deposits

The ERCB expects parties to maintain a record of their ERCB security deposits and to request a refund when eligibility criteria are met. Program-specific criteria for the refund of security deposits are contained in the directives implementing the liability management program. A security deposit refund will only be considered upon receipt of a written request

from the licensee that placed the deposit. The ERCB will only refund a security deposit to the licensee that placed the deposit or, if appropriate, to a trustee, receiver, or receiver manager.

The ERCB will refund security deposits in accordance with the policy or program-specific criteria contained in the regulation or directive under which the deposit was required.

A licensee no longer required to provide a security deposit under any ERCB liability management program or policy and that is compliant with ERCB requirements is eligible for a refund of its security deposit. A licensee having a security deposit in excess of the requirements of any ERCB liability management program or policy and that is compliant with ERCB requirements is eligible for a refund of the difference.

If eligibility criteria have been met and a written request has been received from the licensee that placed the security deposit, the ERCB will refund security deposits as follows:

- For LOCs when there are no remaining security deposit requirements, the ERCB will return the LOC to the licensee that provided the security deposit. If there are reduced but continuing security deposit requirements, the ERCB will permit the amendment or substitution of a LOC for a reduced amount equal to or exceeding ERCB security deposit requirements.

- For cash deposits when there are no remaining security deposit requirements, the ERCB will refund the full amount of any security deposit plus accumulated interest to the licensee that provided the security deposit. If there are reduced but continuing security deposit requirements, the ERCB will refund the difference between the security deposit held and the security deposit requirements or a lesser amount, if requested by the licensee. The ERCB will only refund accumulated interest when a licensee is eligible for a refund of its entire security deposit.

The ERCB will endeavour to refund security deposits within 30 days of receipt of a written request from an eligible licensee.

8 ERCB Resources

A licensee providing a security deposit in accordance with the requirements of *Directive 006: Licensee Liability Rating (LLR) Program and Licence Transfer Process*, *Directive 024: Large Facility Liability Management Program,* or *Directive 075*: *Oilfield Waste Liability Program* is able to view information on the type and amount of any security deposit it has with the ERCB through the Digital Data Submission (DDS) page on the ERCB Web site www.ercb.ca using its DDS Logon ID and password. Details on interest earned on cash deposits is not available on DDS, but must be obtained from financial statements provided by the financial institution administering the trust account.

Inquiries regarding the requirements of this directive should be directed by e-mail to LiabilityManagement@ercb.ca or to the Liability Management Group's Help Line at 403-297-3113.

Appendix 1 Draft Form of Standby Letter of Credit

Issuing financial institution
(name and address):

_____

_____

_____

Date of issue: _____
(Month day, year)

Letter of Credit No: _____

Amount: (Up to $ _____)
([amount in words] Canadian dollars)

Applicant (full legal name and address of the licensee providing the security deposit):

_____

_____

_____

Beneficiary:
Energy Resources Conservation Board
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4

Attention: Section Leader, Liability Management
Telephone: 403-297-3113
Fax: 403-297-7168

On behalf of our client (the "Applicant"), we hereby issue in your favour this Irrevocable Standby Letter of Credit (the "Credit") for up to **$**_____
([amount in words] Canadian dollars)

This Credit is available with the Financial Institution, by payment, against presentation of the following documents:

1) Beneficiary's demand on the Financial Institution in the form attached hereto as Appendix "A", indicating the amount to be drawn under this Credit, the number of this Credit, the date of issue of this Credit, and the name of our Financial Institution.

2) This Letter of Credit for endorsement by us of the amount drawn and on final drawing for cancellation.

This Letter of Credit is irrevocable and shall remain valid for one year up to and including (date) _____. It is a condition of this Credit that it will from time to time be deemed to be automatically extended without amendment for one year from the present or any future expiration date unless

- 60 days prior to any such expiration date we shall notify the ERCB's Chief Financial Officer in writing by registered mail that we elect not to consider this Credit extended for any such additional period, at which time you can draw for the balance of the Credit, or
- 60 days prior to any proposed cancellation we shall notify the ERCB's Chief Financial Officer in writing by registered mail that we elect to cancel this Credit, at which time you can draw for the balance of the Credit.

Partial drawings are permitted.

We will honour each drawing made in conformity with the terms of this letter of credit without enquiring whether you have, as between you and the Applicant, the right to make such drawing and without recognizing any claim of the Applicant.

This Letter of Credit shall be governed by and construed in accordance with the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (the Publication) current at the time of issuance of this Letter of Credit, to the extent that such provisions are not inconsistent with this Letter of Credit, and engages us in accordance with the terms thereof. For matters not covered by the Publication, the laws of the Province of Alberta shall govern. To the extent of a conflict between the laws of the Province of Alberta and the Publication, the Publication will govern. Each of the Financial Institution and the Beneficiary hereby irrevocably and unconditionally attorns to the nonexclusive jurisdiction of the courts of the Province of Alberta and all courts competent to hear appeals there from.

Issuing Financial Institution
Authorized Signing Officer

Appendix 2 Demand Draft

TO THE IRREVOCABLE LETTER OF CREDIT NO. (_____)

ISSUED BY _____ **Financial Institution**
(name of)

DEMAND DRAFT

Drawn Under Letter of Credit No.:_____
(insert Letter of Credit number and date)

To (name and address of issuing financial institution): _____

_____

_____

The undersigned hereby demands that (name of issuing financial institution) _____
_____ pay to the order of the undersigned the sum of **(Canadian $**_____**)**
under the Letter of Credit described above. ([in words] Canadian dollars)

Dated: _____
(Month day, year)

ENERGY RESOURCES CONSERVATION BOARD

Per: _____
Authorized Signing Officer